

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE ALASKA CIVIL LIBERTIES UNION;
DAN CARTER and AL INCONTRO;
LIN DAVIS and MAUREEN LONGWORTH;
SHIRLEY DEAN and CARLA TIMPONE;
DARLA MADDEN and KAREN WOOD;
AIMEE OLEJASZ and
FABIENNE PETER-CONTESSE;
KAREN STURNICK and
ELIZABETH ANDREWS;
THERESA TAVEL and KAREN WALTER;
CORIN WHITTEMORE, GANI RUTHELLEN;
and ESTRA BENSUSSEN and CAROL ROSE
GACKOWSKI,

Plaintiffs,

v.

THE STATE OF ALASKA, and
THE MUNICIPALITY OF ANCHORAGE,

Defendants.

Case No. 3AN-99-11179 CI

On remand from the
Alaska Supreme Court
No. S-10459

ORDER

On June 1, 2006, the Alaska Supreme Court ordered the State of Alaska and the Municipality of Anchorage¹ to provide employment benefits for same sex domestic partners of state employees and retirees by January 1, 2007. This case was then remanded to the trial court to monitor the implementation of the Alaska Supreme Court's order.

On October 17, 2006, the Commissioner of Administration adopted regulations that are designed to provide employment benefits for same sex domestic partners. Plaintiffs requested emergency relief, claiming that the State's regulations are not consistent with

¹ The Plaintiffs do not have any objection to the Municipality of Anchorage's implementation of the Supreme Court's order. Should the State decide to adopt the MOA's required domestic partner criteria, this court would find them to be constitutional.

either the Supreme Court's ruling or the equal protection guarantee of the Alaska Constitution because (1) the State's qualifying criteria are too burdensome and (2) the State has failed to propose regulations providing state employees and their same-sex partners all the same benefits that state employees and their spouses receive. Plaintiffs urge this court to order the State to promulgate, by emergency regulation, the regulations adopted by the Municipality of Anchorage and to order the State to fully comply with the Alaska Supreme Court's ruling.

When examining whether same-sex domestic partners of state employees are entitled to certain state benefits, the Alaska Supreme Court described the relationships at issue as relationships "between adult couples who reside together in long-term interdependent, intimate associations."² It observed that many same-sex domestic partners are in "committed domestic relationships"³ and are "closely connected as any married couple, in the sense of providing the same level of love, commitment, and mutual economic and emotional support, as between married couples."⁴

Despite the language of the Alaska Supreme Court indicating that same-sex domestic partners with the same "truly close relationship"⁵ as married couples are entitled to the same state benefits, the regulations proposed by the State impose criteria that many married individuals would not satisfy, either by choice or because of factors related to their economic status.⁶ This results in "disparate treatment of similarly situated persons" in

² *Alaska Civil Liberties Union v. State*, 122 P.3d 781, 791 (Alaska 2005).

³ *Id.* at 783.

⁴ *Id.* at 784 n.5.

⁵ *Id.* at 791.

⁶ See this court's discussion of the disparities in its Appendix to Court's Order Mandating a Broad Public Notice at § I.A (September 7, 2006).

violation of the state guarantee of equal protection.⁷ Although the Alaska Supreme Court assumed that the State has a legitimate interest in restricting benefits to individuals in truly close relationships, it mandated that the State's restrictions treat those similarly situated in a similar manner. Requiring same-sex couples to meet criteria that many married couples do not have to meet does not comply with this mandate.

Plaintiff's request for emergency relief is granted in part. The State of Alaska is ordered to modify its October 17, 2006 regulations so that they comply with the Alaska Supreme Court's order and the Equal Protection Clause of the Alaska Constitution. In an effort to preserve, as much as possible, the proposed regulations that do meet the Alaska Supreme Court's mandate, I am ordering only a partial revision of these regulations. At a minimum, this court orders the State to revise the draft regulations as follows:

1. The exclusivity requirement in 2 AAC 38.010(b)(2) shall be deleted. In response to the court's inquiry as to the definition of exclusive, the State was unable to provide a definition or guidance as to the intended use of this term. I recognize that the State has a legitimate interest in not providing benefits to partners who are in other long-term relationships. 2 AAC 38.010(b)(8) and (9) ensure that that concern will be met.⁸
2. The twelve-month provisions in 2 AAC 38.010(b)(2), (3), and (7) shall be amended to reflect a six-month period. I recognize the State's interest in making sure that the same-sex partnership is a long-term relationship. In Alaska, a six-month period is sufficient to meet the requirements of AS 25.23.050 (no parental consent

⁷ *Alaska Civil Liberties Union*, 122 P.3d at 787.

⁸ See Appendix to Court's Order Mandating a Broad Public Notice at § II (September 7, 2006) for additional analysis of the exclusivity provision.

required in adoption cases when parent has abandoned child for at least six months); AS 25.25.101 and AS 25.30.300(a)(2) (Alaska is child's "home state" for the purpose of asserting jurisdiction over a child custody matter when the child has resided in Alaska for at least six months); and AS 43.23.008 (a person must have resided in Alaska for at least six-months before a temporary absence in order to remain eligible for the Permanent Fund Dividend). I find that a six-month period is also sufficient to meet the State's interest in ensuring that only domestic partners in long-term relationships are eligible for state benefits.⁹

3. The deleted subsection (9) of 2 AAC 38.010(c) shall be reinserted to the draft regulations, allowing same-sex domestic partners who are "jointly responsible for a child through adoption or guardianship" to rely on this status as one of the required criteria. In addition, the language set out in 2 AAC 38.010(c) shall be revised to allow for benefits to be available to domestic partners who satisfy 2 AAC 38.010(b) and the reinserted subsection (9), or who satisfy 2 AAC 38.010(b) and three criteria in subsections (2) through (8).¹⁰

In addition, the State is ordered to provide the following benefits, already provided to state employees and their spouses, to state employees and their same-sex domestic partners:

1. The right of a state employee to take personal leave upon the medical disability or death of his or her spouse (per AS 39.20.225(b)(2) and (b)(5) and AS 39.20.305(a)(2)); and

⁹ See *Id.* at § I.A for additional analysis of the durational provision

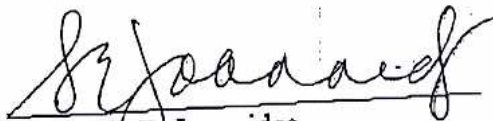
¹⁰ See *Id.* at § II for analysis of the type and number of criteria used to define "domestic partnership." See also this court's discussion in its Order dated September 1, 2006, at 8.

2. The right of a state employee's spouse, as the first person on a statutory list of "default" recipients, to receive unpaid compensation of a deceased employee who failed to designate anyone to receive that payment (AS 39.20.360(2)).

These qualify as employment benefits akin to the benefits at issue in *Alaska Civil Liberties Union v. Alaska*.¹¹ Because denying these benefits to state employees and their same-sex domestic partners does not bear a substantial relationship to the stated governmental interests, they must be provided to state employees in domestic partnerships in the same manner they are provided to state employees with spouses. The State's interests in cost control, administrative efficiency, and promotion of marriage are legitimate, but the absolute denial of benefits to public employees with same-sex domestic partners is not substantially related to these governmental interests.¹²

As the Alaska Supreme Court observed, "Article I, section 1 of the Alaska Constitution mandates equal treatment of those similarly situated."¹³ Therefore, the State is ordered to immediately incorporate this court's order into its regulations or otherwise modify its regulations so that they comply with the Alaska Supreme Court's mandate.

DONE this 30th day of October 2006, at Anchorage, Alaska.


Stephanie E. Joannides
Superior Court Judge

¹¹ See *Alaska Civil Liberties Union*, 122 P.3d at 783-4 n.4.

¹² This court also addressed the issue of additional state benefits in its Appendix to Court's Order Mandating a Broad Public Notice at § III (September 7, 2006). See also this court's Order dated September 1, 2006, at 8.

¹³ *Alaska Civil Liberties Union*, 122 P.3d at 787.

SUPERIOR COURT
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
CHAMBERS OF JUDGE STEPHANIE E. JOANNIDES

FAX TRANSMITTAL

TO:

Alison Mendel, 279-5437
Virginia Ragle, 907-465-2520
Charles Dunnagan, 563-7322
Elizabeth Friedman, 343-4550
Nancy Shaw, 565-8195
Neil O'Donnell, 272-2082
Kenneth Choe, 212-549-2650
Kevin Clarkson, 258-2001

FROM:

Sarah Monkton,
Superior Court Law Clerk to
Judge Joannides

COMPANY:

DATE:

October 30, 2006

FAX NUMBER:

TOTAL NO. OF PAGES INCLUDING COVER:

6

PHONE NUMBER:

SENDER'S PHONE NUMBER

907-264-0430

RE:

3AN-99-11179 CI

SENDER'S FAX NUMBER

907-264-0518

URGENT

FOR REVIEW

PLEASE COMMENT

PLEASE REPLY

PLEASE RECYCLE

NOTES/COMMENTS:

An order in *ACLU v. State of Alaska* follows.

Thank you.